IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1706 of 2002

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUMUDBHAI J SHAH

Versus

STATE OF GUJARAT

Appearance:

MR JC VYAS for Petitioner No. 1-7

MR ND GOHIL, APP, for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 17/04/2003

ORAL JUDGEMENT

1. This petition under section 482 of the Criminal Procedure Code is filed with a prayer to quash the proceedings in Criminal Case No.2422/2001 pending in the Court of learned JMFC, Kalol, wherein on 3.11.2001 the

complaint of the original complainant, who is the respondent no.2 herein, was ordered to be registered and summons were ordered to be issued to the petitioners herein. The complaint was registered for the offences punishable under sections 406, 420, 380 and 114 of IPC, after recording of statement of the complainant. According to the complaint, besides termination of the construction-contract with the complainant and non-payment of the amounts due for the work done, the complaint is made about loss and misappropriation of the building materials and implements of the complainant which, according to the complainant, were lying at the construction site.

2. It was argued by Mr. Jaimin Pandit appearing for Mr. J.C. Vyas, learned advocate for the petitioners that the dispute among the parties was of purely civil nature and in fact a civil suit was filed by the complainant wherein interim relief was also prayed for to injunct any damage to the materials and the implements lying at the construction site. It was on that basis submitted that the complaint filed after about four months of the civil suit was clearly calculated to bring pressure on the petitioners and to take revenge for the alleged loss caused to the complainant by termination of the contract with him. It was also submitted that no offence was made out in the complaint and in any case the criminal proceedings ought to be stayed till the same facts in issue were decided in the civil suit filed by the complainant himself. The judgement of the Supreme Court in the case of T.A. Chavan Vs. M.Y. Patel, reported in 2001(1) SCALE 645 was relied upon for the proposition that in such facts and circumstances, in the interest of justice, the proceedings in the criminal case should remain suspended till the proceedings in the civil case were disposed of. A judgement of this Court (Coram: H.H. Mehta J.) in Criminal Misc. Application No.4450/2000 which was based upon the aforesaid judgement of the Supreme Court was also cited although the facts in both the above cases were basically different from the facts of the present case.

3. It is obvious from the bare reading of the complaint that, as noted earlier, apart from the termination of contract and non-payment of the dues, the complaint is about the loss and misappropriation of the building materials and implements as alleged in the complaint. If those averments make out a case for taking cognizance of the offences alleged against the petitioners, it would be for the trial court to decide the questions of fact, but no exception could be made to

the taking of cognizance of such alleged offences. It is obvious that the defence of the petitioners cannot be taken into account at this stage and no adverse inference can be drawn merely on the basis of the facts that the original complainant had also approached the civil court and had not cared to appear in person or through the pleader before this Court.

4. The learned APP Mr. Gohil cited a more recent judgement of the Supreme Court in the case of Kamaladevi Agarwal Vs. State of West Bengal, reported in AIR 2001 SC 3846, according to which the Magistrate would not be justified in not proceeding with the criminal case either in law or on the basis of propriety for the reason that civil suit was pending. It is clearly observed that criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different Court even though higher in status and authority, cannot be made a basis for quashing of the proceedings. In another recent judgement of the Supreme Court in the case of M. Krishnan Vs. Vijay Singh, reported in 2001 AIR SCW 4142, it is reiterated that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value or accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with malafide and has been initiated maliciously with the ulterior motive for wreacking vengeance on the accused and with a view to spite him due to private and personal grudge. It is further observed that if mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Civil proceedings, as distinguished

from the criminal action, have to be adjudicated and concluded by adopting separate yard-sticks. It is also observed that in almost all cases of cheating and fraud, in the whole transaction there is generally some element of civil nature.

5. In view of the aforesaid prima facie picture of facts of the case and the law laid down by the Supreme Court, the present petition cannot be allowed. Accordingly the same is rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

[D.H. WAGHELA J.]
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